

UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

**CHARLES EDWARD BROWN,**

**Plaintiff,**

**v.**

**JEFFREY A. BEARD, et al.,**

**Defendants.**

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**CIVIL NO. 3:CV-04-2625**

**(Judge Caputo)**

**ORDER**

Plaintiff, Charles Edward Brown, commenced this *pro se* civil rights action with a complaint filed pursuant to the provisions of 42 U.S.C. § 1983. Named as a Defendant is George Matthews, now deceased. Presently pending is Plaintiff's motion to substitute party (Doc. 78), in which he seeks to substitute the Estate of George Matthews as a Defendant.

Federal Rule of Civil Procedure 25 permits substitution where a parties dies during the course of litigation. However, George Matthews died more than ten (10) months prior to initiation of this case (see Doc. 25), and he was never a party to the action. Survivability of a claim against a decedent in a federal case is determined by state law. *Robertson v. Wegman*, 436 U.S. 584, 589 (1978). Under Pennsylvania law, death of a potential party prior to initiation of the action will preclude inclusion in a § 1983 action. *Ehrhardt v. Costello*, 437 Pa. 556, 561 (1970). Therefore, Plaintiff's motion will be denied.

**ACCORDINGLY, THIS 30<sup>th</sup> DAY OF JANUARY, 2006, IT IS HEREBY ORDERED THAT Plaintiff's motion to substitute parties (Doc. 78) is DENIED.**

/s/ A. Richard Caputo  
A. RICHARD CAPUTO  
United States District Judge